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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,788	02/05/2002	Dan E. Fischer	7678.545.2	8136

22913 7590 10/20/2003

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EXAMINER

BUMGARNER, MELBA N

ART UNIT PAPER NUMBER

3732

DATE MAILED: 10/20/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

10/068,788

Applicant(s)

FISCHER, DAN E.

Examiner

Melba Bumgarner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 24-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 24, recitation of "the cannula" lacks sufficient antecedent basis. In claims 25-27, the preamble appears to be improper.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 5, 8-10, 12-15, 20-23, and 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Green (5,829,976). Green discloses a dental delivery tool sized and configured for delivery of a dental composition into a dental preparation comprising a hollow body 20 having a proximal receiving end, a distal delivery end, and a passageway 22 communicating therebetween, the hollow body having a rim distal to the receiving end and a wall extending between the rim and receiving end; and a plurality of fibers 18 (column 3 line 28) coupled to at least a portion of the body; wherein a portion of the fibers extend a length distally beyond the rim; wherein a portion of the fibers are coupled along the wall a distance proximally with

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respect to the rim; and the distance is at least about two and one half times greater than the length (figure 2). As to claim 2, at least a portion of the fibers extending the length is coupled to the rim. As to claim 5, the tool comprises a delivery tip. As to claim 8, the tool comprises a dental applicator 10. As to claim 9, at least a portion of the hollow body is curved 16. As to claim 10, at least a portion of the hollow body is rigid 28. As to claims 12-14, Green shows the distance is at least about three, four, and five times greater than the length. As to claims 15 and 20-22, Green shows the tool as described above including elongate hollow body and coupling means 28. As to claims 23 and 25-27, Green shows a method for manufacturing the tool comprising providing the elongate hollow body as described above and coupling fibers onto at least a portion of the body (column 3 line 13).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-9 and 11-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dragan et al. (6,059,570). Dragan et al. disclose a dental delivery tool sized and configured for delivery of a dental composition into a dental preparation (column 1 line 15) comprising a hollow body having a proximal receiving end, a distal delivery end, and a passageway communicating therebetween, the hollow body having a rim distal to the receiving end and a wall extending between the rim and receiving end; and a plurality of

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fibers 35 coupled to at least a portion of the body; wherein a portion of the fibers extend a length distally beyond the rim; wherein a portion of the fibers are coupled along the wall a distance proximally with respect to the rim; however, they marginally show the distance is at least about two and one half times greater than the length (figure 3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the distance of the fibers coupled along the wall at least about two and one half times greater than the length of the fibers extending distally beyond the rim in order to enable the practitioner to spread or burnish the dental composition being dispensed by the tool onto the surface of a tooth in a continuous and expedient manner in view of Dragan et al. As to claim 2, at least a portion of the fibers extending the length is coupled to the rim. As to claim 3, figure 3 shows at least a portion of the fibers coupled to the rim extend substantially perpendicularly from a face of the rim. As to claim 4, at least a portion of the fibers coupled along the wall extends substantially perpendicularly from the wall. As to claim 5, the delivery tool comprises a delivery tip (column 4 line 58). As to claim 6, the tip is adapted for attachment to a syringe (column 4 line 60). As to claim 7, it would have been an obvious matter of choice to one of ordinary skill in the art to call a "dental delivery tool sized and configured for delivery of a dental composition" an endodontic irrigator. As to claim 8, the tool comprises a dental applicator (column 3 line 35). As to claim 9, at least a portion of the body is curved 30B. As to claim 11, the fibers are deposited onto the body by electrostatic flocking (column 4 line 6). As to claims 12-14, it would be an obvious matter of choice as to the specific ratio of the distance of the fibers coupled along the wall to the length of the fibers

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extending distally beyond the rim. Each of the specific ratio is not disclosed as critical to the claimed invention. As to claims 15-22, Dragan et al. disclose the limitations as described above and a coupling means 30C. As to claims 23 and 24, Dragan et al. disclose a method for manufacturing a dental delivery tool comprising providing the elongate hollow body as described above and coupling a plurality of fibers onto at least a portion of the body as through electrostatic flocking (column 4 line 1).

### ***Conclusion***

7. Any inquiry concerning this communication from the examiner should be directed to Melba Bumgarner whose telephone number is 703-305-0740. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-308-2708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.



Melba Bumgarner  
Patent Examiner